



*26 Geo. II - c. 28 -*

*An ACT for Confirming and Estab-  
lishing an Agreement for Inclosing  
and Dividing certain Common and  
Waste-ground in the Manor of Leath-  
ley, in the County of York.*



Whereas by Indenture, bearing Date the Thirteenth Day of February One thousand Seven hundred and Forty-eight, and made, or mentioned to be made, between *Henry Hitch*, of *Leathley*, in the County of *York*, Esquire, Lord of the Manor of *Leathley* aforesaid, of the one Part; and *John Griffith*, Rector of *Leathley* aforesaid, Clerk, *Henry Moyse*, of *Leathley* aforesaid, Gentleman, *Elizabeth Rhodes*, of *Otley*, in the said County, Widow, *Tobias Furness*, of *Pool*, in the said County of *York*, Maltster, and *Anne* his Wife, *John Swire*, of *Skipton*, in the said County of *York*, Gentleman, and *Alice* his Wife (which said *Elizabeth*, *Anne*, and *Alice*, are Daughters and Co-heiresses of *Robert Garnett*, late of *Leathley* aforesaid, Gentleman, deceased), *John Forrest*, of *Leathley* aforesaid, Yeoman, *Joseph Whitehead*, of *Otley* aforesaid, Gentleman, *Martin Barber*, of *Boroughbridge*, in the said County, Cordwainer, *Anthony Pawson*, of *Weston*, in the said County, Yeoman,

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*Henry Royston*, of *Scarcroft*, in the said County, Yeoman, *Oliver Whitehead*, of *Leathley* aforesaid, Yeoman, *John Hardistie*, Son of *Samuel Hardistie*, late of the City of *London*, Yeoman, *William Lupton*, of *Ripley*, in the said County, Yeoman, and *Thomas Henson*, of *Lyndley*, in the said County, Yeoman, Freeholders within the said Manor, of the other Part; after reciting therein, That there was a certain Common, or Tract of Land, called *Leathley Common*, lying within the Manor of *Leathley* aforesaid (whereof the said *Henry Hitch* was Lord, and Owner of the Soil); and that the several Freeholders and Owners of Lands, Tenements, and Hereditaments, within the said Manor or Lordship of *Leathley* aforesaid, were, in respect of such Lands, Tenements, and Hereditaments, intituled to Right of Common for their Cattle in and upon the said Common, or Tract of Land; and also reciting, That, by a Writing made the Fourteenth Day of *October*, and in the Year of our Lord One thousand Seven hundred and Forty, and signed by the said *Henry Hitch*, and by the said *Henry Moyse*, *Elizabeth Rhodes*, *Tobias Furness*, *John Swire*, *John Forrest*, *Samuel Hardistie*, *William Lupton*, and by *Joseph Williamsen*, the principal Freeholders within the said Manor of *Leathley*, it was agreed, That so much of the said Common as had been that Day marked out (exclusive of the Mean or Baggage-land, thought not worth inclosing), should be, with all convenient Speed, inclosed and taken in, and divided and set out, between the Freeholders and the Lord of the said Manor, in proportion to the Assessments paid to the Poor; and that, in Consideration of the said *Henry Hitch*'s having and taking to his sole Use and Benefit all such Ground as had that Day been marked out as mean and waste (saving the Right of the said Freeholders in and to such Part of the said Waste as should adjoin to the      End of their Shares to be allotted to them of the said Common), the said Freeholders were to have their Proportion or Share of the better Part of the said Common set off separate from the said *Henry Hitch*'s Part, beginning at the East End of the said Common; and the said Mr. *Hitch* was also to make the Fence from *Rowley-Well* to *Stainburnlow Gate*, at his sole Expence, and pay his Proportion of making and erecting all other Fences necessary against the other Highways on the said Common; and that the Mill-hill Close, and another Intake then lately made, should be measured with the said Common; and that he, whose Lot should happen to the Land adjoining to *Riffay-Fence*, should inclose and make the Fence on the West Side of such Lands as should fall to his Lot or Share; and that every Freeholder should, in like manner, inclose his Land Westward, as far as his Proportion of Land should reach; and also reciting, That no Division or Inclosure had been then made, pursuant to the said Agreement; it was, for rendering the said Agreement more effectual, mutually covenanted and agreed by and between the said Parties to the said Indenture, that so much of the said Common, so marked out in order to be inclosed, as aforesaid, together with the said Mill-hill Close and Intake, therein before-mentioned, and which are particularly delineated and distinguished in the Map or Ground-plot thereto annexed from the other Part of the said Common, which is not intended to be inclosed, should, with all convenient Speed, be inclosed, divided, and allotted, to and



and for the Use and Benefit of the said *Henry Hitch*, and the said several Freeholders, respectively, in such Parts and Shares as should be proportionable to the Value of their several Freeholds within the said Manor, such Value to be ascertained according to the Rate which they are severally assessed at, and pay to the Poor, in respect of their several Freeholds within the said Manor; and that all Right of Common in the said Common and Lands so agreed and intended to be inclosed, as aforesaid, shall, after such Inclosures shall be so made, cease, and be from thenceforth for ever extinguished; and that all the remaining Part of the said Common and Lands not thereby agreed and intended to be inclosed, as aforesaid, should, from and after such Inclosures, so made as aforesaid, be the sole Property of, and remain to and for the sole Use and Benefit of, the said *Henry Hitch*, his Heirs and Assigns, absolutely discharged of all Right of Common whatsoever, of the said Freeholders, of and in the same (saving the Right of the said Freeholders, in and to such Part of the said Waste as should adjoin to the      End of their Shares of the said Common, as aforesaid): And it is thereby further covenanted, concluded, and agreed, That, provided he the said *Henry Hitch*, his Heirs and Assigns, should hold and enjoy, to his and their own Use, the several Lands and Hereditaments thereby agreed to be held and enjoyed in Severalty, discharged of all Right of Common of the several Persons, Parties to the said Indenture, and their Heirs and Assigns; that then, and in Consideration thereof, they the said several Freeholders respectively, their Heirs and Assigns, should have and take, and enjoy, their several Shares and Proportions of and in the said Common and Lands so agreed and intended to be inclosed, as aforesaid, in the best Part of the said Common, beginning at the East End thereof, adjoining to *Riffay-Fence*, and so proceeding from thence Westwardly; and that he the said *Henry Hitch*, his Heirs and Assigns, shall have and take his Share and Proportion of and in the said Common and Lands so agreed and intended to be inclosed, as aforesaid, from the West Part thereof, proceeding from thence Eastwardly: And it is thereby further agreed, That they the said several Freeholders, their Heirs and Assigns, should and might inclose their several and respective Parts and Shares of and in the said Common and Lands so agreed and intended to be inclosed, as aforesaid, which they should be severally intitled to, by virtue of the said Indenture, and the said Agreement so made, as aforesaid, and should and might, at all times thereafter, hold and enjoy the same, so inclosed, to them, and their Heirs, in Severalty, for ever, discharged of all Right of Common whatsoever, of him the said *Henry Hitch*, his Heirs and Assigns; and that when, and so soon as, the said several Parts and Shares of the said several Freeholders of and in the said Common and Lands so agreed and intended to be inclosed, as aforesaid, should be settled, allotted, and divided, to and amongst the said Freeholders respectively, and should be inclosed, as aforesaid, he the said *Henry Hitch*, his Heirs and Assigns, should and would, upon the Request, and at the Costs and Charges, of the said several Freeholders, his, her, and their Heirs and Assigns respectively, by good Conveyances and Assurances in the Law, as Counsel shall advise, convey, confirm, and assure, unto and to the Use  
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of the said several Freeholders, his, her, and their Heirs and Assigns respectively, the said several Parcels of Land so to be allotted to, and inclosed by them respectively, as aforesaid; discharged of all Right of Common, as aforesaid, saving and reserving thereout, unto the said *Henry Hitch*, his Heirs and Assigns, all Mines of Coal, and other Mines, Minerals, and other Royalties whatsoever; the said Freeholders, their Heirs and Assigns, making, doing, and executing, all such Acts, Deeds, Matters, and Things, in the Law, as shall be necessary for releasing, discharging, and extinguishing, all their Right of Common in the Part and Share of him the said *Henry Hitch*, of, in, and to, the said Common and Lands, so agreed and intended to be inclosed, as aforesaid: And it is thereby further covenanted, concluded, and agreed, by and between the said Parties to the said Indenture, That he the said *Henry Hitch*, his Heirs and Assigns, should and might inclose such Part and Share of the said Common and Lands so agreed and intended to be inclosed, as aforesaid, as he should be intitled to by virtue thereof, and of the said Agreement, so made as aforesaid; and should and might, at all times thereafter, hold and enjoy the same, so inclosed, and also the said Land therein before called Mean or Baggage-land (except as before excepted), with free Right to inclose the same to him, and to his Heirs, in Severalty, for ever, discharged of all Right of Common whatsoever of them the said *John Griffith*, *Henry Moyse*, *Elizabeth Rhodes*, *Tobias Furness*, and *Anne* his Wife, *John Swire*, and *Alice* his Wife, *John Forrest*, *Joseph Whitehead*, *Martin Barber*, *Antony Pawson*, *Henry Royston*, *Oliver Whitehead*, *John Hardistie*, *William Lupton*, and *Thomas Henson*, respectively; and also that they, and all claiming under them, or any of them respectively, should and would, upon the Request, and at the Costs and Charges in the Law, of the said *Henry Hitch*, his Heirs and Assigns, make and execute, or cause to be made and executed, all and every such Acts and Deeds as by him or them, or his or their Counsel, learned in the Law should be reasonably devised, advised, or required, for the releasing, discharging, and extinguishing, all their Right of Common, as well of and in the said Parcel of Land which should be allotted, as the Part or Share of him the said *Henry Hitch*, of and in the said Common and Lands agreed and intended to be inclosed, as aforesaid, as of and in all the remaining Part of the said Common and Lands not thereby agreed to be inclosed, as aforesaid; saving the Right of the said Freeholders in and to such Part of the said Waste as should adjoin to the      End of their Shares of the said Common, as aforesaid; so as that the said *Henry Hitch*, his Heirs and Assigns, should, at all times thereafter, quietly and peaceably have, hold, and enjoy the said Parcel of Land, so to be allotted as his Part and Share of the said Common and Lands, so agreed to be inclosed, as aforesaid, as also all the remaining Part of the said Common and Lands which shall remain uninclosed, to and for his and their own Use and Benefit, discharged of all Right of Common of the said Freeholders, saving such Right as aforesaid: And it is thereby further covenanted and agreed, That he the said *Henry Hitch*, his Heirs and Assigns, shall and will make the Fence from



from *Rowley-Well* to *Stainburnlow-Gate*, and at all times thereafter maintain the same, at his and their own Charges and Expences; and also bear his and their proportionable Part and Share of the Expences of making and maintaining all other Fences, necessary to be made against any other Highways on the said Common; and also that the said several Freeholders, their Heirs and Assigns, should and would make the Fences of their respective Inclosures Westwards from *Riffay-Fence*, and, at all times thereafter, maintain the same, at their own Charges and Expences respectively; and also pay and bear a proportionable Part and Share of the Expences of making and maintaining all other Fences, which shall be necessary to be made upon the said Common, as aforesaid: And further, That if it should be thought necessary to apply for an Act of Parliament, for the more effectually carrying the said Agreement into Execution, according to the true Meaning of the said Indenture, then the Parties thereto did thereby agree to sign any Petition, or do any other Matter or Thing necessary for the obtaining such Act; provided the same should be obtained at the Costs and Charges of the said *Henry Hitch*, his Heirs and Assigns, as in and by the said Indenture, relation being thereunto had, may more fully appear:

And whereas such Inclosure and Division, so agreed upon, as aforesaid, would be a manifest Advantage to the several Persons interested in the Premises, and tend to the Improvement of their respective Estates and Properties in the said Manor and Township of *Leathley* aforesaid; Yet the same cannot be established, and rendered effectual to answer the Intention of the Parties, without the Aid and Authority of Parliament;

*May it therefore please Your MAJESTY,*

That it may be Enacted; And be it Enacted, by the KING's most Excellent MAJESTY, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Indenture herein before set forth and recited, and the several Covenants, Agreements, Clauses, Provisoos, Matters, and Things, therein inserted and contained (other than such of them as shall be varied, altered, or otherwise explained, by the Purport, Tenor, Force, and Effect, of this present Act), shall be, and the same are hereby, ratified, established, and confirmed, according to the Purport and true Meaning of the said Indenture, as fully and effectually, to all Intents and Purposes, as if the same had been incorporated in, and expressly Enacted in and by, this Act: And, for the better effecting and enforcing the Agreement contained in the said recited Indenture, and rendering the same more effectual for the Purposes thereby intended, it shall and may be lawful to and for the said *Henry Hitch*, and he is hereby authorized and required, by Writing, under his Hand, on or before the Twenty-fifth Day of *July* One thousand Seven hundred and Fifty-three, to nominate and appoint a Person used to, and skilled in, Surveying and Measuring of Land, and not interested in the

said Inclosure: And it shall also be lawful for the other Freeholders, and Owners of Land, in the Manor and Township of *Leathley* aforesaid, or the major Part of them, and they are hereby authorized and required, on or before the said Twenty-fifth Day of *July* One thousand Seven hundred and Fifty-three, by Writing, under their Hands, to nominate and appoint another Person, not interested in the said Inclosure, and so qualified, as aforesaid.

**And it is hereby further Enacted,** That the said Two Persons, so to be nominated and appointed respectively, shall and may, some time on or before the Twenty-fourth Day of *August* One thousand Seven hundred and Fifty-three, meet at *Leathley* aforesaid, on a certain Day to be mutually agreed upon between the said *Henry Hitch*, and the other Freeholders within the said Manor, or the major Part of them; so as Notice of such Meeting be given by Writing fixed on the Door of the Parish Church of *Leathley* aforesaid, at least Fourteen Days before such Meeting: And the said Surveyors shall, on the same Day, or any subsequent Day or Days to be by them agreed upon and appointed for that Purpose, survey the said Common or Waste-ground, and other Lands and Grounds, so agreed to be inclosed and divided, as aforesaid, and set out, assign, and allot, the same, unto and amongst the Lord of the said Manor of *Leathley*, and the Freeholders and Land-owners within the said Manor, in Pursuance and Conformity to, and according to, the Tenor and true Meaning of the said Indenture, and the Agreement of the Parties therein contained.

**And it is hereby further Enacted,** That when and as the said Common, Waste, and other Lands and Grounds, shall be so set out, assigned, and allotted, as aforesaid, the several Plots and Parcels of Land and Ground, so to be set out and allotted, shall be inclosed, hedged, and fenced, at the Charge of such Person and Persons, and in such manner, as in and by the said Indenture is in that behalf mentioned, provided, agreed, and declared.

**And it is hereby further Enacted,** That in case either the said *Henry Hitch*, his Heirs or Assigns, or the said Freeholders, or the major Part of them, shall, respectively, neglect or refuse to nominate and appoint a Surveyor for the Purposes aforesaid, within the Time herein before limited and appointed in that behalf; or in case the Surveyor to be nominated or appointed on the Part of either the said Parties, shall attend at *Leathley* aforesaid, on the Day to be signified and appointed in and by such Notice for the Meeting of such Two Surveyors, as aforesaid; and no Surveyor shall attend on the same Day for or on the behalf of the other of the said Parties; then, and in such case, it shall and may be lawful to and for the Surveyor who shall so attend, and he is hereby authorized and impowered, to proceed in surveying, setting out, and allotting, the said Common Waste-ground, and other Lands and Grounds, so agreed to be inclosed and divided as aforesaid, in Pursuance and according to the Tenor of this Act, and the said Agreement and Indenture; and that such Survey and Allotment



ment shall be as valid and effectual, to all Intents and Purposes, as if the same had been done, performed, and executed, by Two Surveyors, hereby directed to be nominated and appointed for that Purpose, as aforesaid; any thing herein contained to the contrary notwithstanding.

**Provided always**, That nothing herein contained shall extend, or be construed, deemed, or taken, to revoke, make void, alter, or annul, any Will or Wills, Settlement or Settlements, Lease or Leases, or to prejudice any Person having or claiming any Jointure, Dower, Portion, Debt, or Incumbrance, out of, upon, or affecting, the said Common, Waste, and other Lands and Grounds, so agreed to be inclosed and divided, as aforesaid, or any Part thereof; but that the Common Lands and Grounds, so to be assigned and allotted upon the said Inclosure and Division, shall, immediately after such Allotment, be, remain, and enure, and be held and enjoyed, and the several Persons, to whom the same shall be assigned and allotted, shall from thenceforth stand and be seised thereof, to such and the same Uses, and to and for such and the same Estates, and subject to such and the same Wills, Leases, Limitations, Remainders, Charges, Tenures, Rents, Services, and Incumbrances, as the Lands, Grounds, and Common Right, in respect whereof such Allotments shall, by virtue of this Act, or the said Indenture and Agreement hereby confirmed, be so made and assigned, should and would have been subject and liable to, charged with, and affected by, respectively, in case the same had remained uninclosed; any thing herein contained to the contrary notwithstanding.

**Saving always** to the KING's most Excellent MAJESTY, his Heirs and Successors, and to all and every other Person and Persons, Bodies Politick and Corporate, his, her, and their Heirs, Successors, Executors, and Administrators (Other than his Majesty, in respect of such Right as he may have in the said Common and Waste-grounds, as Patron of the Rectory of *Leathley*; and other than the Parties to the said Indenture, and all and every other Person and Persons intitled to any Lands, Grounds, Common of Pasture, or other Common Right, in and upon the Common, Waste-lands and Grounds, so agreed and directed to be divided and inclosed, as aforesaid), All such Estate, Right, Title, Interest, Ways, Claims, and Demands, as they, every or any of them, had before the passing this Act, or could or ought to have had and enjoyed, in case this Act had not been made.

[ 1753. ]

*Establishing an  
for Inclosing and  
certain Common a  
ground, in the  
Leathley, in the  
York.*

[ 1753. ]